

14 March 2023

Ms Ylva Carosone
Executive Director, Small Business Victoria
Department of Jobs, Precincts and Regions
GPO Box 4509
MELBOURNE VIC 3001

Via email: ris@ecodev.vic.gov.au

Retail Leases Regulations 2023

Thank you for the opportunity to provide a submission in response to the *Retail Leases Regulations 2023 – Exposure Draft* (the proposed Regulations) and Regulatory Impact Statement (RIS). We also appreciate your engagement with us on ongoing matters.

Overall, we welcome and support the proposed ‘preferred options’ outlined in the RIS.

This submission seeks to help substantiate those positions; including, for instance, that the current \$1 million occupancy threshold remains adequate, despite likely arguments by small business and tenant groups to increase it, including based on narrow-minded ‘rent’ analysis, which often fails to highlight corresponding sales increases. As outlined in this submission, we also raise two related issues for your consideration and response:

- That the ongoing issues of what we consider to be an ambiguous and broken disclosure regime are fixed, including noting recent changes from 1 December 2022, and
- In anticipation that some stakeholders will seek to broaden the scope of the consultation, that such issues are not simply added to a ‘list’ of so-called issues for a future review. The persistent pushing by certain small business and tenant groups for retail leasing to solve all business issues, or to shift more risk to landlords for their commercial gain, needs to be put to bed and not entertained.

On the latter point above, it seems to be forgotten by some stakeholders that trading impacts during the COVID-19 pandemic arose as a direct result of Government public health orders, which largely either restricted the movement of people and the ability to open to the public to trade either at all (e.g. hairdressers) or at full capacity (e.g. cafés serving takeaway only). These decisions were made by the Victorian Government, often without providing commensurate support or compensation. Much of this was left solely to landlords, vs. for instance, suppliers, logistical companies, financial institutions, or insurers.

As a group and industry we have unmatched understanding and experience with retail leasing issues. In collaboration with our members, the SCCA is proactively involved in every inquiry, review and legislative/regulatory proposal pertaining to retail leasing. Since the Productivity Commission’s inquiry report ‘The Market for Retail Tenancy Leases in Australia’ (2008) we have provided evidence-based, trusted advice to governments and regulators in 33 such instances.

Of direct relevance in Victoria, this includes the current *Retail Leases Regulations 2013*, the *Retail Leases Amendment Act 2020*, and the *Retail Leases Amendment Regulations 2022* (2022 Regulations). This is in addition to conceiving the COVID-19 SME Code of Conduct and principally representing the interests of retail landlords in all regulations that gave effect to the Commercial Tenancy Relief Scheme (2020-2022).

At the outset, we wish to make clear to Small Business Victoria (SBV) that the Property Council of Australia (PCA) does not represent the shopping centre industry on retail leasing and legislative/regulatory issues. This is the agreed purview of the SCCA. Any perspectives shared by the PCA should not be considered representative of our members or sector, or contrasted or conflated with those of the SCCA.

Position and recommendations

Our industry position is that the current Regulations should be remade with no substantive changes, effectively retaining the status quo to provide regulatory stability and legal certainty to the market. Accordingly, our recommendations correspond with the preferred options identified in the RIS:

- **Setting occupancy cost thresholds:** Option 1 (OC1) – retain the current threshold of \$1 million per year, with no further review period in the near to medium term.
The \$1 million threshold ensures that a clear majority of tenants and all 'genuine' SMEs will be covered by the Act.
- **Disclosure statement requirements:** Option 1 (DS1) – retain the current structure which maintains four distinct disclosure statements (for shopping centre tenants, non-shopping centre tenants, renewed leases and tenant assignment), noting our comments below that it needs to be made clearer what disclosure statements are needed in relevant circumstances.
The current structure ensures that disclosure statements can be tailored and issued based on the relevant lease circumstances.
- **Apportioning outgoings:** Option 1 (F1) – retain the current formula to determine and apportion outgoings, where tenants pay in proportion to their lettable area (noting discrepancies between the proposed Regulations and what is articulated in the RIS at section 11(1) vs. page 38), and the prescribed percentage of 10 per cent with respect to independent verification of specific outgoings.
Landlords have a clear benefit in ensuring that outgoings remain low for retail tenants and the formula ensures that there is equity in the manner in which outgoings are distributed, noting that landlords often cover around 50-65 per cent of outgoings costs.

Additionally, per the SCCA's ongoing discussions with SBV, it is important that outstanding concerns with sections 26 and 28(1A)(b) of the *Retail Leases Act 2003* (the Act) – which have unintended consequences for landlords and tenants alike – are reconciled in the short term. Our view is that these are highly relevant to and consistent with the scope of the proposed Regulations and should form a complementary addition:

- **Renewal disclosure statements:** SBV to provide clarity in terms of (1) when disclosure on renewal is required (section 26) and (2) what form this should take, noting the unintended consequences introduced by the 2022 Regulations.
- **Rent payable under renewed term of lease:** SBV to address outstanding drafting concerns pertaining to section 28(1A)(b).

Overview

On the whole, the SCCA agrees with and supports the RIS assessment and the preferred options that this evidences and underpins. Our experience is that the Regulations operate effectively and are well understood by tenants and landlords, which is a direct result of a balanced approach and consistent application with limited amendments. This is reflective of a mature regulated market.

Of note, we disagree with some aspects of the RIS that reflect on 'policy problems' (i.e. claims or generalisations made about our sector, including assumed behaviours in the absence of regulation) and a readiness to discount industry self-regulation (this has been very successful in other matters, i.e. Casual Mall Licensing Code; Reporting of Sales and Occupancy Costs Retail Code) though this does not materially affect the specific multi-criteria and impact analyses of the RIS.

Accordingly, the Regulations should be remade with no substantive changes, save for additionally providing clarity with respect to sections 26 and 28(1A)(b) of the Act.

Scope

Regretfully, we anticipate that small business and tenant groups will view the consultation process as an opportunity to pursue other policy outcomes by broadening the scope of the Act through the proposed Regulations.

For instance, so-called 'force majeure' or early lease termination measures, enduring 'hardship provisions'/mandated rent relief, preferential end of lease rights, and/or other radical, opportunistic wants that would fundamentally erode property and lease law principles, create a moral hazard by

allowing tenants to 'choose' when to comply with contractual obligations, unfairly transfer risk from tenants to landlords, and ultimately impact investment and contractual certainty.

We also anticipate these stakeholders agitating on the matter of embedded energy networks, which is routinely misunderstood, and for more and more disclosure and market rent information; driven by the commercial interests and to sustain the business models of private organisations commercialising retail leasing databases under the guise of 'transparency' to prospective tenants.

Our recent experience is that small business and tenant groups lazily propose commercially advantageous policies without any objective examination or underlying evidence, and are either naïve to or disregard the feasibility and flow on effects that various wants would give rise to, i.e. fit out costs contributions will no longer be feasible, higher bank guarantees and additional insurance will be necessary, a temporary trading environment akin to weekend market or local fete will ensue, the value proposition and benefits of agglomeration for other tenants will be eroded etc.

Such issues are not considered and examined by the RIS, which is clear and quite limited in its scope. Inasmuch, and following discussions with SBV, we understand that it is Government's intent that the scope of the proposed Regulations should not materially change and that any extraneous issues will not be considered. An open-ended review of occupancy costs, outgoings, and disclosure requirements (or of any/all other stakeholder-referred matters) is clearly not the SBV's intent. This consultation process should not serve a secondary purpose as a scoping exercise for future work.

If the scope of the proposed Regulations was expanded, it would be appropriate, and our expectation, that the SCCA – as the principal regulated party – be afforded an opportunity to consider and respond to any issues raised and, equally, reserve the right to introduce a raft of interrelated issues and evidence.

Comments on Exposure Draft

1. Objectives

Agreed.

2. Authorising provision

Agreed.

3. Commencement

We have no objection to the commencement date, which follows from the expiry of the current Regulations, assuming that no substantive changes are made.

If, however, substantive changes are proposed then a mid-April commencement date provides insufficient time for the SCCA to consider and respond to any flow on effects and for retail property owners to adjust their systems and procedures to accommodate any necessary adjustments.

Depending on the complexity of these, we request a three month 'grace period' to ensure landlords are not put in a position where they are inadvertently in breach of the law, akin to section 8(4) of the current Regulations.

4. Revocation

Agreed.

5. Definitions

Agreed.

6. Meaning of retail premises

Regulation 6 – Agreed.

There is no rationale for adjusting the current threshold

As the RIS considers, and ultimately concludes, there is no clear rationale for adjusting the \$ 1 million occupancy cost threshold for determining the meaning of *retail premises* and coverage under the Act. The SCCA agrees with the rationale and arguments presented in the RIS that OC1 is preferred.

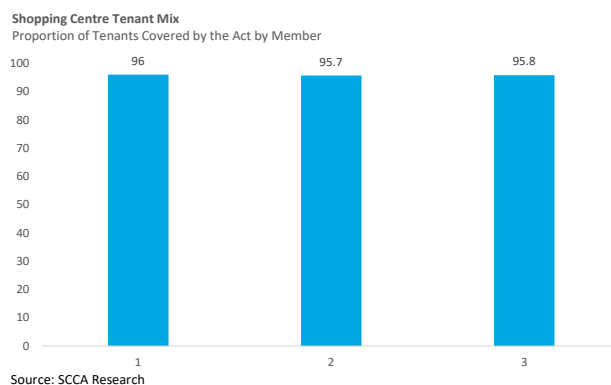
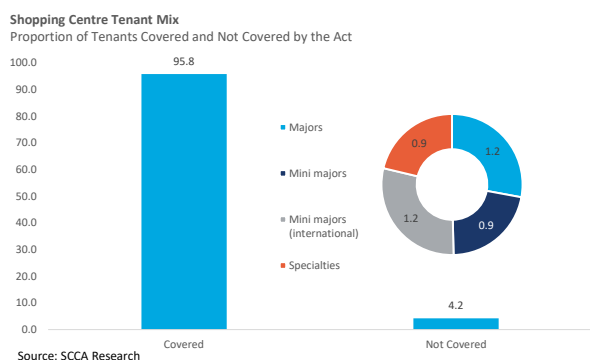
The RIS effectively identifies and sets criteria that reinforce the continued appropriateness of a \$1 million threshold. These would need to be challenged or disproved and outweigh the simplistic notion that inflation has occurred in the past decade and should correspondingly raise the threshold (OC2), independent of any/all other influences.

A \$1 million threshold achieves the Act's objectives

We note that no feedback has been provided to indicate that tenants of premises with occupancy costs >\$1 million are impacted by provisions that the Act is designed to address. Rather, the RIS acknowledges that tenants around or above this threshold have 'significant resources, information and bargaining power', which accords with our members' experience that the \$1 million threshold covers a large proportion of their tenants.

The key question that needs to be addressed is: "does the \$1 million occupancy cost threshold still cover relevant small businesses"? In our view, the clear answer is yes, which is substantiated below.

A snapshot of 3 members, covering 3,992 tenancies, indicates that the Act applies to 95.8 per cent of tenants (ranging from 95.7 to 96 per cent), noting that these members and tenant mix predominantly cover larger, 'high value' centres that are not typically of the market (i.e. with a much greater number of luxury goods tenancies). SBV should be confident that a 97 per cent proportion of coverage across the sector is accurate.



Of the 4.2 per cent that are not covered by the existing threshold:

- 1.2 per cent are *majors* (i.e. Coles, Woolworths, Aldi, IGA, Myer, David Jones, JB HiFi, Big W, Kmart, Harvey Norman etc.),
- 2.1 per cent are *mini majors* (i.e. Rebel Sport, Priceline etc.), 1.2 per cent of which are internationally owned, (i.e. Uniqlo, Apple, Zara etc.), and
- 0.9 per cent are *specialities* (i.e. Cotton On, Louis Vuitton, Tiffany & Co, Chanel, Ralph Lauren, Prada etc.).

Any lessee that sits over the existing threshold generally falls into one or more of the following categories:

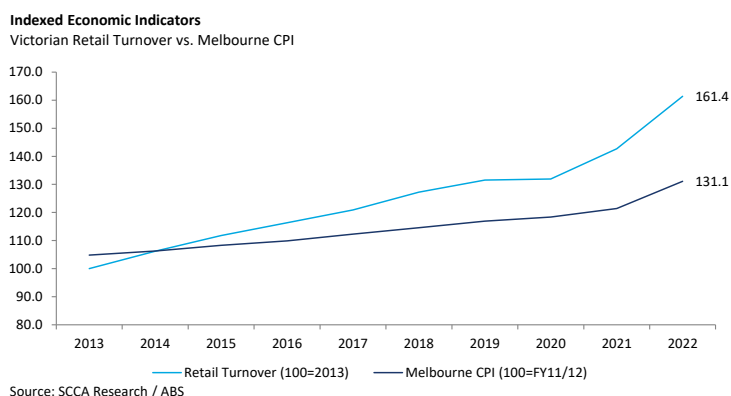
- They are a large entity, in most cases a national chain or operator with a large national store network (i.e. they are not a 'small business' under various definitions).
- Internationally owned company.
- Publicly listed company, or subsidiary (which are excluded under the Act).
- They have a relatively large floor space, being larger than the average within a particular centre.
- They are a 'stand out' and not representative of all tenants within their category (e.g. pharmacy), even within the same centre, mainly due to the floorspace of the store (see above).
- They have a relatively large Moving Annual Turnover, meaning their 'larger rent' is reflected by a 'larger turnover'.

We are unaware of any arguments or evidence that would suggest the current threshold is insufficient in terms of meeting the Act's objectives. Notionally this would take the form of a significant number of individual case studies, feedback considered by SBV etc. – not unsubstantiated wants/claims by small business and tenant groups.

Despite a wide range of tenants, tenancy mixing, tenancy sizes, rental values and location factors etc., a \$1 million threshold covers the vast majority of retail leases and retail leasing circumstances. It would be disappointing if larger-sized businesses were simply afforded unwarranted protections under the Act, absent any demonstrated need, and the definition of small-to-medium sized businesses were extended even further.

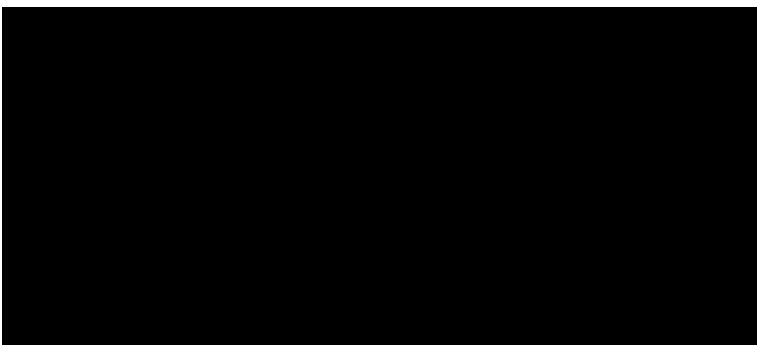
Retail turnover has doubled CPI

It is difficult to rationalise a ~30 per cent increase to the threshold simply to correspond with CPI (under OC2) when considering that Retail Turnover has more than doubled the rate of inflation, growing from \$64.1 billion in 2012 to \$105.7 billion in 2022.



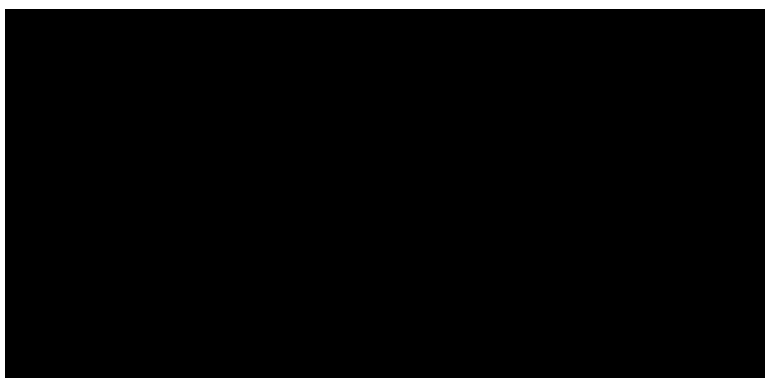
Occupancy costs have returned to stability

It is also relevant to consider that occupancy costs have remained relatively stable within this context, separating the period of the pandemic and noting that 50-65 per cent of prospective costs for tenants are actually borne by landlords to maintain competitive rents.



The leasing market benefits tenants

The RIS also identifies that there is no evidence of a substantial rise in retail lease prices, or of any instability in the leasing market. Analysis of ASX company data highlights that tenants benefit from stable-negative leasing spreads, i.e. a tenant signing onto a new lease or exercising an option to extend can expect lower rents than at the end of their previous lease. Stable-negative leasing spreads require landlords to offer deals and incentives to tenants, reflective of a capacity to pay, changing economic circumstances, and pressure on landlords to maintain high occupancy.



Regulatory stability and legal certainty

The RIS is correct to identify regulatory stability and legal certainty as arguments for an extension of the status quo. Existing lease agreements have been entered into with an understanding that certain tenants are/are not covered by the Act, including various rights and obligations on landlords and tenants. Any mid-lease fluctuation will have significant administrative and legal flow on effects.

Proportion of coverage

We note that the RIS concludes that the proportion of businesses covered by the Act would remain at approximately 97 per cent under OC1 vs. 98 per cent with OC2. An estimated 97 per cent proportion of coverage is very high, as high as should be expected utilising an occupancy cost threshold.

It is worth noting that annual rent and occupancy costs are a function of several factors being principally determined by the size (i.e. m²) and value (i.e. \$/m²) of the space, such that the occupancy cost threshold can never truly be expected guarantee and capture business size.

Accordingly, the pursuit of 98-100 per cent coverage via a higher threshold could not be pursued with any confidence that it would not conversely pick up businesses that arguably should not be viewed as requiring or warranting protections under the Act.

Minimising coverage of larger businesses

In this sense, OC2 would run counter to the core principle of minimising coverage of larger businesses.

It is recognised that the Act and Regulations are silent on those larger businesses not covered by the publicly listed corporation rule, groups or businesses with multiple store chains, or franchises; none of which are accounted for under an occupancy cost threshold. The occupancy threshold could only reasonably be extended if these additional business types – which currently receive coverage when many do not warrant it – are addressed.

In the future, consideration should be given to excluding large, non-publicly listed businesses from the Act. Several private groups (whether they be pharmacy, hospitality, or general retail groups) – with tens and hundreds of stores and tens and hundreds of millions of in annual turnover – currently enjoy the benefit of protections under the Act and yet do not meet the definition or characteristics of ‘small business’ that should rightly be covered.

As well, retail businesses with multiple (a network or ‘chain’ of) stores cannot reasonably be deemed to lack the acumen and capacity (i.e. business experience, financial muscle, access to high-level advice, and market power etc.) to deal with landlords and ‘look after themselves’ in negotiations. However, by virtue of having multiple separate tenancies they are deemed a ‘small business’ that warrants protections and administrative advantages afforded by the Act.

With respect to franchises, while a franchisee might reasonably be considered a small business owner (with only one or two stores), it is typically a parent company the negotiates leasing arrangements and advises the franchisee. The franchisee is then receiving the benefit of the strong bargaining power and commercial leverage of its franchisor. Again this capacity is not observed by the Act or through an occupancy cost threshold under the Regulations.

Combined, the above three groupings likely account for a significant number of businesses. Accordingly, we disagree with the explanation put forward by the RIS and consider it erroneous:

‘...prescribing the occupancy cost at \$1 million per annum, as opposed to a lower figure, imposes some costs in the form of coverage of some significant retail groups that are not publicly listed corporations. These costs are borne by landlords and potentially by those retail groups. However, this scenario would occur in limited circumstances and arguably both the landlord and tenant are of sufficient size to bear any costs imposed’.

An occupancy cost ratio of \$1 million affords numerous businesses coverage by the Act, including many that are knowingly not small-to-medium sized. While we are not agitating for legislative or regulatory change at this time, any arguments (OC2) made in favour of extending the threshold would need to be balanced by truly seeking to minimise coverage of larger businesses.

Dispute data does not support a need to raise the threshold

We note that data provided by the Victorian Small Business Commission (pages 21-23 of the RIS) indicates both (1) that the 'legislation effectively regulates the relationship between a large landlord and a small tenant' and (2) 'the small landlord-small tenant relationship is the most common and the most problematic and requires the protection provided by the legislation'.

Considering the low levels of disputes involving shopping centres – 6.2 per cent (510) of 8,271 disputes pertaining to the Act involved shopping centres, of which 3.6 per cent (298) are tenant-initiated – and that smaller landlords are not likely to be deliberating with tenants that have occupancy costs >\$ 1 million in relation to the Act, increasing the threshold again cannot be justified and is not a necessary or well targeted extension of the Act.

An appropriate compromise

The existing threshold can fairly be considered to serve as an appropriate compromise, short any fuller consideration of businesses that the Act covers.

The RIS evidences that appropriate and reliable coverage through an occupancy threshold has been maximised. Any further changes are speculative and cannot be undertaken with confidence that additional businesses would be genuine small-to-medium sized and warrant coverage of the Act. A \$1 million occupancy cost threshold need not have a strict bearing on inflation and must consider other related factors. Unless these criteria can be challenged then there is no basis to broaden the existing threshold.

7. Provision of landlord's disclosure statement and proposed lease

Regulation 7 – Agreed.

Disclosure requirements are more than adequate

Our view is that the form of existing disclosure framework is comprehensive, and that tenants have significant protections to ensure that appropriate information is disclosed in connection with leasing arrangements. There is no evidence to indicate any failure or shortcomings with the status quo and we support the retention of Schedules 1 and 2.

Disclosure statements should provide relevant information to a first-time prospective tenant so that they are aware of all relevant critical aspects of the operation of a shopping centre which are necessary to make a decision on whether to enter into a lease with a landlord or not.

The prescribed form and content of disclosure statements under the Regulations is comprehensive and sufficient to make a decision as to whether or not to enter a lease with a landlord and offers substantial protections for tenants in the event of non-disclosure. Any proposal to require additional disclosure of information such as tenancy plans and average rents fail to recognise that such additional information:

- is likely to be readily available (i.e. the location of other tenants and tenancy mix, typically via public websites or physically inspecting the shopping centre),
- has no practicable value (i.e. average rent across all tenants in a shopping centre would have limited application or relevance to a tenant given the variables affecting tenant performance including usage, tenancy size, business models etc), or
- may be commercially sensitive and confidential information (i.e. embedded network pricing information).

Further, the RIS articulates an assumption that tenants always operate from a position of relative ignorance with limited or no ability or bargaining power to negotiate lease terms which is not correct. There is already significant certainty provided to tenants around their lease and payment obligations (including outgoings costs). The Act and Regulations place strict requirements on landlords to properly disclose outgoings costs to tenants and how such costs can be recovered.

Any uncertainty around outgoings costs arises because shopping centres are generally price-takers, not price setters, for much of the operating expenditures. For example, statutory charges and insurances are determined by other bodies and prices fluctuate throughout the term of a lease.

However, tenants know at the beginning of a financial year how much they will be paying in outgoing charges which allows tenants to budget for such costs and also have assurance that any costs are appropriately audited and adjusted if there are in fact savings at the end of the financial year. A prudent landlord will always seek to minimise operating costs and manage expenses to ensure tenants have certainty around the costs of occupation.

Accordingly, we do not support ad-hoc changes to disclosure requirements that would only have the effect of undermining the form and elements of the 'Harmonised Landlord's Disclosure Statement', which was developed by a National Retail Tenancy Working Group (Working Group).

The Working Group has previously deliberated on the form and content of disclosure statements, which are largely reflected in Schedules 1 and 2. Our view is that any additional content has been determined not to be warranted on a cost benefit or evidentiary basis.

8. *Landlord's disclosure on renewal of lease*

Regulation 8 – Agreed, subject to the comments below.

Disclosure on renewal is redundant

Our view is that disclosure statements are not required before exercising a right of renewal and constitute a redundant and unnecessary administrative process. The purpose of a disclosure statement is to ensure a first-time lessee is aware of all relevant critical aspects of the operation of the shopping centre which are necessary to make a decision on whether to enter into a lease.

For instance, this issue was considered by the 'Review of the Retail and Commercial Leases Act 1995 (SA)' (2016), which highlighted three pertinent considerations in this regard:

- A sitting lessee (who is renewing its lease) has typically had a number of years of experience in the relevant shopping centre and is familiar with all aspects of the operation of the centre.
- A tenant, in giving notice to exercise their option to renew, effectively creates a new lease term.
- Practical difficulties may arise if the landlord were required to give a disclosure statement before the start of the new lease term.

Additionally, tenants and landlords by the nature of their ongoing commercial relationship will seek and exchange information throughout the life of a lease in the normal operating course. Our members feedback is that they regularly provide tenants with additional information on outgoings and other shopping centre information both on request and pro-actively as part of their day-to-day operations.

Ongoing uncertainty and ambiguity must be addressed

As SBV is aware, there exists a lack of clarity around the circumstances under which disclosure on lease renewal is required when the parties negotiate a new lease under section 26. The Act creates uncertainty and ambiguity in terms of whether a disclosure statement is required if the parties enter into an entirely new lease where there is continuous occupation of the premises, which stems from the meaning of *renewal* under section 9.

In tandem, provisions of the *Retail Leases Amendment Regulations 2022*, which require renewal disclosure statements to note all changes to the previous lease, have meant that in order to comply with the Act, landlords typically issue two forms of disclosure statement to retailers in Victoria as a result of the ambiguity in the drafting of the current Act.

This uncertainty has needlessly imposed an administrative burden on landlords, who elect to provide duplicative disclosure documentation in order to comply with the Act, which feedback suggests results in frustration for tenants, who are supplied with overlapping disclosure documentation.

Our experience is that the disclosure regime in Victoria is overengineered in comparison to other jurisdictions in terms of the quantum and complexity of information required. The complexity, cost and resource to generate disclosure statements is generally not understood or underappreciated. This is exacerbated by the ambiguity and flaws surrounding disclosure on lease renewal, which is ultimately disproportionate to the intended benefits and counterproductive, rather the delivering a benefit for tenants.

In short, while we support Regulation 8, this is subject to SBV providing (1) the required clarity in terms of when disclosure on renewal is required and (2) what form this should take.

9. Recovery of outgoings from the tenant

Regulation 9 – Agreed.

10. Liability to contribute to non-specific outgoings

Regulation 10 – Agreed.

11. Statement of outgoings

Regulation 11 – Agreed.

Determining and apportioning outgoings through prescribing an apportionment formula, where retail tenants pay for shared outgoings in proportion to their floor space (i.e. lettable area of the tenant relative to total lettable area; see Table 6.1 on Page 41 of the RIS) is an accepted industry norm and practice that we expect will continue under the Regulations. We note that the scope for alternative options is limited and expect no change.

We support the retention of the proposed section 11(2), which gives effect to prescribing a 10 per cent with respect to section 47(6)(a)(v) of the Act, consistent with the current Regulations.

We note that the proposed section 11(1) does not accord with the text of the RIS (at page 38, paragraph 6). However, it is clear that SBV is proposing that the current Regulations should be remade to 'maintain legal certainty and to provide stability within the market' with a prescribed 10 per cent with respect to section 47(5)(b)(i) of the Act.

For clarity, the 2013 RIS proposed the adoption of a prescribed percentage of 0.1 per cent SCCA. Our feedback at the time remains pertinent:

- Instead of having 'no practical impact' a prescribed percentage of 0.1 per cent will have disastrous consequences for shopping centre managers and owners.
- Rather than effectively repealing the regulation, this change will substantially increase costs on landlords.
- The cost accounting systems of shopping centre owners can comprise several hundred different line items which, although comprising very small amounts individually, would each certainly amount to more than 0.1 per cent of the total amount of the outgoings.
- These are 'grossed up' to more manageable 'primary' accounts. We estimate that the outgoings statement, if this regulation is approved, would grow to around 6 to 8 pages and would contain a level of detail that tenants would find of no utility.
- There is no evidence that tenants need, or are demanding, a greater level of information and transparency than is currently obtained in the outgoings statements. Tenants are adequately protected by the requirement that the outgoings statement is properly audited (section 47).

12. Procedure for obtaining consent to assignment

Regulation 12 – Agreed.

Disclosure on assignment should not be a landlord responsibility

Our overarching view is that an assignment is effectively an exchange between two parties – the lessee and assignee. A lessor/landlord has not and should not have a responsibility to the assignee and therefore should not be required to provide a lessee or assignee with a disclosure in order to satisfy the lessee's obligation to provide disclosure information to a prospective assignee and so extinguish the lessee's own responsibility to the assignee.

It should be incumbent on the lessee to provide an appropriate level of disclosure to persons wishing to take an assignment of the lease from the lessee, who is typically also purchasing the lessee's business and relying on the representations of the lessee in relation to the business. Regardless, we support the retention of Schedule 4 in the interests of regulatory certainty and legal stability.

Rent payable under renewed term of lease

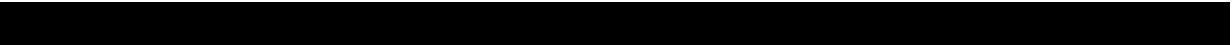
As SBV is aware, we have concerns with section 28(1A)(b) of the Act, following amendments made in 2020. There remains a lack of clarity around the drafting intent of this section, whereby it is unclear whether the advice of the new rent should be a dollar amount or 'the amount determined by a market rent review under clause ## of the lease'. Section 28(1A)(e) of the Act is the main reason why landlords need to provide over disclosure. Section 28(1A)(b) of the Act exacerbates the issue.

We request that SBV address this outstanding concern as a complementary addition to the proposed Regulations.

Next steps

We appreciate SBV meeting the SCCA's member working group to provide further context and discuss operational and administrative issues with the current and proposed Regulations. Additionally, we look forward to an opportunity to review the proposed Regulation if any adjustments are made following this consultation.

On a final note, we request that parts of our submission that are **commercial in confidence**, which are denoted as such, be redacted if the submission as a whole is made freely and publicly available.



Yours sincerely,

James Newton

Manager, Policy and Regulatory Affairs